

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

WILLIAM FLUHARTY,
Petitioner.

v.

DONALDSON MINING COMPANY;

No. 96-1927

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,
Respondents.

On Petition for Review of an Order of
the Benefits Review Board.
(95-2189-BLA)

Submitted: December 12, 1996

Decided: December 24, 1996

Before MURNAGHAN, NIEMEYER, and LUTTIG,
Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

S. F. Raymond Smith, RUNDLE & RUNDLE, L.C., Pineville, West
Virginia, for Petitioner. Douglas A. Smoot, JACKSON & KELLY,
Charleston, West Virginia, for Respondents.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

William Fluharty, a former coal miner, seeks review of a decision of the Benefits Review Board (Board) affirming an administrative law judge's (ALJ) decision to deny his application for black lung benefits. The ALJ denied benefits in this case based on his finding that Fluharty failed to establish the presence of pneumoconiosis or that his pneumoconiosis contributed to his totally disabling respiratory impairment. The Board affirmed the finding of no pneumoconiosis, and found it unnecessary to address the causation issue.

On appeal, Fluharty contends that the ALJ erred by finding the medical opinion evidence insufficient to establish pneumoconiosis pursuant to 20 C.F.R. § 718.202(a)(4) (1996). We disagree. Fluharty's contentions that the reports credited by the ALJ finding no pneumoconiosis were impermissibly based solely on negative X-rays and the fact that the claimant's impairment was obstructive are belied by the record. Dr. Crisalli, on whose opinion the ALJ primarily relied, explicitly acknowledged that pneumoconiosis could produce an obstructive defect, but stated that the nature of the claimant's particular obstructive defect was inconsistent with pneumoconiosis. Moreover, he and other physicians finding no pneumoconiosis in this case explained in great detail how not only the negative X-ray evidence, but also the miner's history, symptoms, physical examinations, and objective studies supported their conclusion that the miner's pulmonary disease is solely attributable to smoking.

Accordingly, the decision of the Board is affirmed. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED